

1 to the best of my knowledge it would?

2 A. I don't recall responding to that, but
3 if that's what my deposition says.

4 Q. Have any of the chemicals that you had
5 on hand at the time of your deposition
6 expired?

7 A. Yes.

8 Q. Which of the chemicals that you had on
9 hand have expired?

10 A. The Midazolam.

11 Q. Is that chemical still there at
12 Riverbend?

13 A. It is.

14 MR. DEL PINO: If I could ask,
15 please, for the Warden to be handed
16 Plaintiffs' Exhibit 2.

17 MR. SUTHERLAND: Your Honor, I'm
18 going to object to the line of questioning
19 regarding expiration of drugs. The protocol
20 on its face calls for certain drugs. It
21 doesn't envision, like many things, doesn't
22 envision the use of expired drugs.

23 So getting into whether a drug
24 that is on hand might be expired really has
25 no relevance to the facial challenge

Attachment 41

1 challenging the use of drugs that would be
2 properly used.

3 THE COURT: Is that not implicit?
4 If it refers to drugs, we're assuming they're
5 not expired?

6 MR. SUTHERLAND: We're assuming
7 they're not expired. So we're talking about
8 whether drugs that might be expired or not at
9 a certain time isn't relevant to the facial
10 challenge.

11 THE COURT: I didn't make myself
12 clear. Let me start over. You know the
13 subject matter very well.

14 The protocol speaks in terms of
15 certain drugs on its face. When it says a
16 certain drug, the assumption, of course, is
17 that it's efficacious, not expired?

18 MR. SUTHERLAND: Yes, ma'am.

19 THE COURT: Therefore, it's
20 appropriate to ask factually whether they
21 have those on hand, because that would be
22 compliant with the protocol they're not
23 expired. If they are expired, it would not
24 be compliant with the protocol. So it's a
25 factual question.

Attachment 41

1 MR. SUTHERLAND: I think our
2 argument would be whether they were expired
3 on a given day the protocol assumes that the
4 use of unexpired drugs on the date of the
5 execution and the presence of an expired drug
6 on a given day is irrelevant to a facial
7 challenge.

8 THE COURT: All right. And the
9 Court, either I didn't understand the
10 argument or it's been switched up a little
11 bit. The Court overrules that objection. It
12 does provide me information about that. It
13 is probative. So the Court overrules. Thank
14 you.

15 MR. SUTHERLAND: Thank you.

16 MR. DEL PINO: Chancellor, in
17 light of Defendants' counsel's objection --
18 BY MR. DEL PINO:

19 Q. Warden Mays, if you still have that
20 January, 2018, protocol or manual in front of
21 you, I would ask you, please, sir, to turn to
22 Page 37.

23 THE COURT: For the record, this
24 is trial Exhibit 1.

25 MR. DEL PINO: Yes, Your Honor.

Attachment 41

1 BY MR. DEL PINO:

2 Q. Do you see that page, sir?

3 A. I do.

4 Q. Paragraph 3 at the bottom of the page,
5 "The chemicals on hand are monitored for
6 expiration dates. All of the chemical boxes
7 and bottles have an expiration date. And all
8 chemicals are in tamper-proof bottles or
9 containers. As the chemicals reach their
10 expiration dates, they are disposed of by
11 hazardous waste pick up."

12 Did I read that paragraph correctly,
13 Warden?

14 A. You did.

15 Q. And did you just testify, Warden, that
16 the expired chemical is still there at
17 Riverbend?

18 A. I did.

19 Q. And, Warden, is that then in violation
20 or contradiction of the January, 2018,
21 protocol?

22 A. I haven't gotten around to do a
23 disposal of them yet.

24 Q. But that is what the protocol calls
25 for, isn't it?

Attachment 41

1 A. It is.

2 Q. And that's not happened yet; is that
3 correct?

4 A. It's not.

5 Q. Thank you, sir. Now, if I could ask
6 you, please, sir, to take a look at
7 Plaintiffs' Exhibit 2. I'll ask you, sir, if
8 you recognize that document?

9 A. I do.

10 Q. What do you recognize that document to
11 be, Warden?

12 A. Lethal injection execution manual.

13 Q. And you said earlier that you had seen
14 lethal injection execution manuals for
15 several years and indicated that they updated
16 from time to time.

17 Can you tell when that execution
18 manual, lethal injection execution manual,
19 was updated?

20 A. July 5th, 2018.

21 Q. Okay, sir. When's the first time that
22 you saw that document, sir?

23 A. About a week to a week and a half ago.

24 Q. About a week to a week and a half ago.

25 So that would be around July the 3rd?

Attachment 41